

Serial No. **10/724,767**
Amendment dated **January 10, 2007**
Reply to Office Action of **October 11, 2006**

Docket No. **K-0280.01**

REMARKS/ARGUMENTS

Claims 61-65, 67, and 70-83 are pending in this application. By this Amendment, claims 67 and 79 have been amended.

The Office Action objects to claims 67 and 79-83 because of informalities in that they depend from canceled claims. By this Amendment claims 67 and 79 have been amended to correct the dependency. Hence, this objection is respectfully traversed.

The Office Action rejects claims 61-65, 67 and 70-83 are provisionally rejected on the ground of non-statutory double patenting over claims 43, 54, 47, 49-55, 84 and 85 of co-pending U.S. Patent Application Serial No. 09/898,040 (now US Patent No. 7,127,661). Since the application has issued as a patent, the undersigned will now address this rejection as a statutory double patenting rejection, rather than a provisional double patenting rejection. This rejection is respectfully traversed.

As the Patent Office may be aware, **35 U.S.C. 101** prevents two patents from issuing on the same invention. "Same invention" means identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1984); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).

A reliable test for double patenting under **35 U.S.C. 101** is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Claim 43 (now claim 1 of

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US Patent No. 7,127,661) recites the use of a puncturing block in the encoding step, and further recites “interleaving the result of the repetition or puncturing according to the channel interleaver size.” Neither of these two features are recited in independent claim 61 of the instant application. Hence, claim 61 can be literally infringed without literally infringing claim 43.

It is respectfully submitted that claim 1 of US Patent No. 7,127,667 and claim 61 of the instant application do not recite the same invention. Hence, withdrawal of this rejection is respectfully traversed.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.

If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, **Daniel Y.J. Kim**, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this,

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concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
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